



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.NO.1765 OF 2002

1.P.Udayam

2.P.Kalaiselvam

3.P.Subramanian

4.N.Krishnan :Plaintiffs/1-4 Respondents/Appellants

.vs.

1.S.Jothimurugan

2.S.Rajalakshmi :Defendants 1 and 2/Appellants/
Respondents

3.U.Rathinam(died) :Defendant No.3/5th Respondent/
Respondent's

4.R.Kasinathan(died)

5.R.Marimuthu

6.Sumathi

7.Manikandan

8.Amulraj :Respondents 4 to 8.

(Respondents 4 and 5 are brought on record as legal representatives of the deceased third respondent as per order of this Court made in C.M.P(MD)Nos.1217 to 1219 of 2005 in S.A.No. 1765 of 2002, dated 31.1.2020)

((Respondents 6 to 8 are brought on record as legal representatives of the deceased fourth respondent as per order of this Court made



in C.M.P(MD)Nos.9864 to 9866 of 2019 in S.A.No.1765 of 2002, dated 31.1.2020)

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PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.116 of 1999, dated 30.01.2002, on the file of Additional Subordinate Judge, Kumbakonam reversing the judgment and decree made in O.S.No. 6 of 1993, dated 18.2.1998, on the file of Additional District Munsif Court-I, Kumbakonam.

For Appellants :Mr.T.R.Subramanian

For Respondents :No appearance
1,2 and 6 to 8

Respondents 3 and 4 :Died

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.116 of 1999, dated 30.01.2002, on the file of Additional Subordinate Judge, Kumbakonam reversing the judgment and decree made in O.S.No.6 of 1993, dated 18.2.1998, on the file of Additional District Munsif Court-I, Kumbakonam.

2.The Plaintiffs in the suit are the appellants. The suit is filed for partition of the Plaintiffs 1/4th share in the suit property. The suit was decreed by the trial Court. On appeal filed by the defendants 1 and 2, the First Appellate Court reversed the findings of the Trial Court and dismissed the suit by upholding the plea of



ouster. Aggrieved by the same, the plaintiffs are before this Court.

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3. According to the plaintiffs, the suit property originally belong to one Ambalavana Padayachi. He had two sons namely, Ladamuthu Padayachi and Kullan Padayachi. Ambalavana Padayachi died in the year 1925. Thereafter, Ladamuthu Padayachi and Kullan Padayachi have inherited the property equally. Ladamuthu Padayachi had five sons namely, Ayyakannu, Natesan, Seenivasan, Uthirapathi and Swaminathan. Ladamuthu Padayachi died in the year 1945. The Plaintiffs 1 to 3 are the wife and children of Ayyakannu, the eldest son of Ladamuthu Padayachi. Ayyakannu died in the year 1965. The second son of Ladamuthu Padayachi namely, Natesan died in the year 1970 and his only son is the fourth plaintiff. The third son of Ladamuthu Padayachi Seenivasan died in the year 1955 as a bachelor and his interest in the suit property devolved on his four brothers. The fourth son of Ladamuthu Padayachi Uthirapathi died in the year 1980 and he sold his share in the suit property in favour of fifth son of Ladamuthu Padayachi Swaminathan Padayachi under Ex.A1, dated 10.10.1950. Likewise, the other son of Ambalavana Padayachi namely, Kullan sold his half share in favour of Swaminatha Padayachi under Ex.A2, dated 19.12.1948. Thus Swaminatha Padayachi, was entitled to $\frac{3}{4}$ share in the suit property and the



plaintiffs, who represents the branch of Ayyakannu and Natesan was entitled to $\frac{1}{4}$ share in the suit property. It was further claimed by the plaintiffs that Swaminathan Padayachi sold the entire suit property including the share of the plaintiffs to one Swaminatha Mudaliyar on 06.06.1959 under Ex.A4. The sale executed by Swaminatha Padayachi would not bind the plaintiffs. The defendants 1 and 2 are the legal heirs of Swaminatha Mudaliyar. The plaintiffs demanded partition in the year 1985 from Swaminatha Mudaliyar and the reasonable request of the plaintiffs was not acceded to and hence, they were constrained to file a suit for partition.

4.The contesting defendants 1 and 2 are all legal representatives of Swaminatha Mudaliyar, who purchased the suit property in the year 1952 from Swaminatha Padayachi, filed a written statement and resisted the suit by raising the plea of ouster. It was contended by the defendants that Ayyakannu, Natesan and Packirisamy were ousted from the suit property long back and therefore, they lost their right, if any, over the suit property. It was specifically contended by the defendants that their predecessor-in-interest Swaminatha Padayachi had been in possession and enjoyment of the suit property from the year 1959 without any interference from plainiffs or their predecessors-in



-interest and hence, the title of the defendants over the entire suit property got crystalized by adverse possession. It was also asserted by the defendants that after purchasing the suit property in the year 1959, their father Swaminatha Mudaliyar removed the thatched building which stood in the property and had enjoyed the same as a vacant site. He had enjoyed the same by leasing out the property and by mortgaging the same to one Selvaraj. Since the defendants and their predecessors-in-interest have been in possession and enjoyment of the suit property for more than forty years, adverse to the interest of the plaintiffs, the present suit for partition was liable to be dismissed. On these pleadings, the contesting defendants 1 and 2 sought for dismissal of the suit.

5.The third defendant filed a written statement supporting the plea of the plaintiffs.

6.Before the trial Court, the power agent of the plaintiffs was examined as P.W.1 and the third defendant was examined as D.W.1 and the first defendant was examined as D.W.2. On behalf of the plaintiffs, five documents were marked as Ex.A1 to Ex.A5 and on behalf of the defendants, six documents were marked as Ex.B1 to Ex.B6.



7.The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs were entitled to partition of their 1/4th share and decreed the suit as prayed for. Aggrieved by the same, the defendants 1 and 2 preferred an appeal in A.S.No.116 of 1999, on the file of Additional Sub-Court, Kumbakonam. The First Appellate Court reversed the findings of the trial Court and held that the defendants 1 and 2 proved their plea of adverse possession and allowed the appeal. Aggrieved by the same, the plaintiffs have come by way of this Second Appeal.

8.At the time of admission, this Court formulated the following substantial questions of law by order, dated 05.12.2002:

1.Whether the Lower Appellate Court is right in dismissing the Plaintiffs' suit for partition when the first defendant's father had purchased the undivided shares of the property from the co-owners of the plaintiffs without a partition among them?

2.Whether the finding by the Lower Appellate Court that the defendants 1 and 2 have prescribed title by adverse possession is based on adequate evidence?

9.The learned counsel for the appellants submitted that the defendants 1 and 2 have miserably failed to prove the plea of



adverse possession raised by them and absolutely there is no evidence to prove their hostile possession for more than the statutory period. Therefore, the learned counsel submitted that the findings reached by the First Appellate Court upholding the plea of adverse possession is liable to be set aside. The learned counsel further submitted that one of the son of Ladamuthu Padayachi, namely Swaminatha Padayachi sold the entire suit rproperty including the share of the plaintiffs in favour of the defendants predecessor-in-interest Swaminatha Mudaliyar in the year 1959 without the consent of the plaintiffs. When the plaintiffs or the predecessors-in-interest was not a party to the sale deed executed in favour of Swaminatha Mudaliyar, the plaintiffs are entitled to maintain a suit for partition in respect of their share.

10.From the pleadings of the plaintiffs, it is clear that Swaminatha Padayachi entitled to $\frac{3}{4}$ share in the suit property. Amabalavana Padayachi's, the second son Kullam sold his half share to Swaminatha Padayachi under Ex.A2, dated 9.12.1948. Swaminatha Padayachi himself had $\frac{1}{10}$ share in the suit property in his capacity as one of the son of Ladamuthu Padayachi, who also entitled to $\frac{1}{2}$ share. It is also seen that Swaminatha Padayachi purchased $\frac{1}{10}$ share from his brother Uthirapathi under Ex.A1, dated 10.10.1950. It is also the admitted case that another brother



of Swaminatha Padayachi namely, Seenivasan died in the year 1955 as a bachelor and his share in the suit property devolved on all his four brothers including Swaminatha Padayachi. Therefore, in that capacity, Swaminatha Padayachi is entitled to $\frac{2}{40}$ share in the suit property. Therefore in all, Swaminatha Padayachi is entitled to $\frac{30}{40}$ share ($\frac{1}{2} + \frac{1}{10} + \frac{1}{10} + \frac{2}{40}$) = $\frac{3}{4}$ share in the suit property. It is also not in dispute that the remaining $\frac{1}{4}$ share originally belonged to the plaintiffs predecessor-in-interest namely, Ayyakannu and Natesan. The children of Ayyakannu and Natesan are the plaintiffs 1 to 3 and the fourth plaintiff,. It is the specific case of the plaintiffs that Swaminathan who had $\frac{3}{4}$ share in the suit property had sold the entire suit property to Swaminatha Mudaliyar under Ex.A4, dated 6.6.1959 and the same will not bind the plaintiffs. However, the defendants 1 and 2, who are all the legal heirs of Swaminatha Mudaliyar raised a plea of ouster and adverse possession on the ground that Swaminatha Mudaliyar had been in exclusive possession and enjoyment of the suit property from the year 1959. In this regard, the First Appellate Court considered the admissions of P.W.1.

11. None of the plaintiffs entered the witness box to depose about their joint possession over the suit property. The only witness examined on behalf of the plaintiffs is the power agent of



the first plaintiff namely, P.W.1. A perusal of his evidence would suggest that he was not aware of the affairs of the plaintiffs' family and hence, he was not competent to speak about the sale transaction that had taken place long back. Some of the admissions made by P.W.1 regarding the possession of defendants predecessor Swaminatha Mudaliyar are extracted below:

சாமிநாதன் தாவா சொத்து தனக்கு பூரண உரிமை உண்டு என்று சாமிநாத முதலியாரிடம் விற்றுவிட்டார். இவ்வாறு முழுசொத்தையும் விற்க சாமிநாதனுக்கு உரிமை இல்லை.....

சாமிநாத முதலியார் இந்த சொத்தை கிரையம் வாங்கினார் என்பதும் எனக்குத் தெரியும். சொத்தை அவர் வாங்குகின்ற காலத்தில் பக்கிரிசாமி, உத்திராபதி ஆகியோர் ஆட்சேபனை எதுவும் தெரிவிக்கவில்லை. அதற்கு காரணம் அவர்கள் வெளிநாட்டில் இருந்தார்கள். வெளிநாட்டில் இருந்து பக்கிரிசாமி வந்தபோது சாமிநாத முதலியாரிடம் சென்று தாவாசொத்து வாங்கியதைப்பற்றி கேட்டார். 25 வருடத்திற்கு முன்பு இந்தியா வந்தபோது பக்கிரிசாமி தாவாசொத்து வாங்கியதுபற்றி சாமிநாதமுதலியாரிடம் சென்று கேட்டார். சாமிநாதன் நான் சொத்தை வாங்கிவிட்டேன் என்றும், அதை எப்படி உனக்கு கொடுப்பது என்றும் கூறிவிட்டார்.....



சாமிநாத முதலியாரிடம் எந்த வருடம் வாதிகள் சென்று கேட்டார்கள்

என்பது எனக்கு தெரியாது. 25 வருடத்திற்கு முன்பாக இந்தியாவிற்கு

வந்த பக்கிரிசாமி சுவாமிநாத முதலியாருக்கு 12

ஆண்டுகளுக்குள் இந்த நிலம் சம்பந்தமாக எழுத்துமுலமான

அறிவிப்பு கொடுத்தார்களா என்று எனக்கு நினைவில்லை. எனக்கு

தெரிந்தவகையில் நடேசன் வகையறாவும், பக்கிரிசாமி வகையறாவும்

இந்த சொத்துக்களை எந்தக்காலத்திலும் அனுபவிக்கவில்லை

என்றால் எனக்கு நினைவில்லை..... உத்திராபதியின் மகன் 3ம்

பிரதிவாதி ரெத்தினம் சொத்தை விற்கின்ற காலத்தில் உத்திராபதி

தனக்காகவும் தனது மைனர் மகனுக்காகவும் விற்றுள்ளார்.

10.10.1950ல் விற்றுவிட்டார். 2.12.1948ல் குள்ளன்படையாச்சி தனது

பாகத்தை சுவாமிநாத படையாச்சியிடம் விற்றுவிட்டார். அதன்பிறகு

தாவாசொத்துகள் அனைத்தையும் சுவாமிநாத படையாச்சிதான்

அனுபவித்து வந்தார். 1.2.1956ல் சுவாமிநாத முதலியாரிடம், சாமிநாத

படையாச்சி எல்லா செர்ததுக்களையும் அடமானம் வைத்து கடன்

பெற்றிருந்தாரா என்பது எனக்குத் தெரியாது. 6.6.1959ல் சுவாமிநாதன்

வகையறாவிடம் விற்றுவிட்டார். எனக்கு படிக்கத்தெரியும். 6.6.1959ல்

சுவாமிநாத முதலியாருக்கு சுவாமிநாதபடையாச்சி விற்றுள்ளார். அந்த

கிரையபத்திரத்தில் கிழமேல் 14 அடி தென்வடல் 35 அடி என்று

கூறப்பட்டுள்ளது. அதற்குள் உள்ள கூரை வீட்டோடு விற்றுள்ளார்.



கிரையபத்திரத்தில் இந்த சொத்தில் நடேசபடையாச்சி

கூரைவீட்டுக்கும் கொள்ளைக்கும் கிழக்கு தங்களது அன மனைக்கு மேற்கு தங்களுகான தோட்டத்துக்கு வடக்கு, தெருவிற்கு தெற்கு இதற்குட்பட்ட சொத்து 14க்கு 35 விற்கப்பட்டுள்ளது. இதன் கிரைய பத்திரவும் பதிவு சான்றிதழ் பி.சா.ஆ.1. தென்வடல் 35 அடி தவிர மேற்கொண்டு 105 அடி வரை என்று காட்டுவதற்கு ஆவணம் உள்ளது. சார்பதிவாளர் அலுவலகத்தில் இருந்து ஆவணம் எடுத்து வைத்துள்ளோம். அதை நீதிமன்றத்தில் தாக்கல் செய்யாததன் காரணம் எனக்கு தெரியாது. உதயத்தம்மாளுக்குத் தான் தெரியும். சொத்து முழுவதையும் சாமிநாத படையாச்சி, சுவாமிநாத முதலியாருக்கு கிரையம் செய்து கொடுத்துவிட்டார். அதைத் தவிர வாதிகளின் குடும்பத்திற்கு 14, 35 அடிக்கு பக்கத்தில் வேறு சொத்துகள் கிடையாது என்றால் இதைப்பற்றி எனக்கு தெரியவில்லை.....சுவாமிநாத படையாச்சிக்கு முழு சொத்தில் உரிமை இருந்ததால்தான் முழு சொத்தையும் விற்றுவிட்டார் என்றால் எனக்கு தெரியாது.

12.A perusal of the above admissions of P.W.1 would clearly indicate that in the year 1959, the entire suit property was sold by Swaminatha Padayachi in favour of Swaminatha Mudaliyar, predecessor-in-interest of defendants 1 and 2 and he has been in



possession and enjoyment of the same. He also admitted that, Packirisamy, the predecessor of the plaintiffs' approached Swaminatha Mudaliyar 25 years back and demanded partition. However, he refused the claim of the plaintiffs on the ground that he purchased the entire suit property. Even assuming that the said point of time(demand for partition 25 years back) was taken as starting point of hostile possession by Swaminatha Mudaliyar, the present suit filed by the Plaintiffs after 25 years, is clearly barred by limitation. Apart from that, the admissions of P.W1, Ex.B2- Mortgage deed executed by Swaminatha Mudaliyar in favour of selvaraj under ExB2 also supports the plea of adverse possession. The predecessor of defendants 1 and 2, who purchased the entire suit property from Swaminatha Mudaliyar in the year 1952 under Ex.B2, mortgaged the suit property in favour of one Selvaraj on 5.9.1980. Therefore, it is clear that Swaminatha Mudaliyar had exercised full control over the suit property all along. Ex.B4 is the tenancy chit executed by Swaminatha Padayachi in favour of Swaminatha Mudaliyar in respect of the property sold to Swaminatha Mudaliyar under Ex.A1. The suit property situate in R.S.No.150/1A1 was also dealt with in the partition deed entered into in the family of Swaminatha Mudaliyar under Ex.B5. All these documents coupled with clear admission of P.W.1 would indicate that Swaminatha Mudaliyar had been exercising full control over



the suit property from the date of purchase in the year 1959 and the demand for partition made by the plaintiffs predecessor-in-interest Packirisamy was refused by him 25 years back. In such circumstances, defendants 1 and 2 have been in possession and enjoyment of the entire suit property with necessary animus for more than the statutory period. Therefore, the First Appellate Court, on proper appreciation of P.W.1's admissions and other documents, came to the conclusion that defendants 1 and 2 proved their plea of adverse possession. The said factual conclusion reached by the Court below is not vitiated by any perversity. Therefore, the substantial questions of law formulated at the time of admission are answered against the appellants and in favour of the respondents.

13. Accordingly, the Second Appeal stands dismissed. No costs.

05.07.2024

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn

To



- 1.The Additional Sub Judge,
Kumbakonam.
- 2.The Additional District Munsif-I,
Kumbakonam.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

S.SOUNTHAR, J.

vsn

JUDGMENT MADE IN
S.A.NO.1765 OF 2002



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